IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2421 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MOHAMAD IQBAL ABDUL RAHMAN SHAIKH

Versus

COMMISSIOER A.M.C.

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Appearance:

1. Special Civil Application No. 2421 of 2002

MS AVANI S MEHTA for Petitioner No. 1

MR DG SHUKLA FOR M/S. NANAVATI & NANAVATI for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 11/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has prayed for direction against the respondents to appoint the petitioner on Class IV post on compassionate grounds.

2. The father of the petitioner who was working as Assistant Teacher managed by the respondent No.2 i.e. Municipal Primary Education Committee expired on 7.9.95 while in service. It is stated that the deceased teacher left behind him a family comprising of his widow, one unmarried daughter and two sons, one of whom is the present petitioner. The case of the petitioner is that on account of death of the deceased teacher while in service, the family was left in destitute condition and that therefore as per the policy of the respondents, the petitioner deserves to be appointed on compassionate grounds. The petitioner applied for being granted compassionate appointment on 21.7.96, but so far he has not been granted appointment. The petitioner has also stated that he was called for interview, but the respondents have failed to offer him appointment.

3. Appearing in response to the notice issued by this Court, the respondents have filed affidavit in reply contending, inter alia, that the case of the petitioner was considered in light of the prevalent guidelines. However, in the meeting held on 15.3.2000, a decision was taken against the petitioner being granted appointment on the ground that his elder brother was in employment of the respondent school-board.

4. On behalf of the petitioner, it is contended that the family of the deceased was left in destitute condition on account of the sudden death and that therefore, the respondents ought to have offered compassionate appointment to the petitioner.

5. Appearing for the respondents, learned counsel Shri D.G.Shukla for M/s. Nanavati & Nanavati has contended that the case of the petitioner was though considered, was not found fit for being granted compassionate appointment. He has pointed out that even as per the application of the petitioner, the family had received an amount of Rs.44,344/- by way of provident fund and had also received an amount of Rs.68,400/- as gratuity. He has further stated that the family is currently receiving family pension of approximately Rs.2000/- per month. He has submitted that when the Committee has examined all aspects of the matter including the size of the family and the financial benefits received by the family and has come to the

conclusion that the family cannot be held to be in destitute condition deserving compassionate appointment, this Court should not interfere with such decision. He has pointed out that as per the resolution of the respondent dated 7.8.86, only in case the death of the employee leaves the family in destitute condition that compassionate appointment would be justified. He has relied upon a judgment of the Hon'ble Supreme Court in the case of State of H.P. v. Jafli Devi, (1997) 5 SCC 301 and submitted that when one member of the family is already working in the respondent Board, second appointment on compassionate ground would not be justified.

6. Having considered the material on record, it may be noted that though the petitioner has denied that his brother is staying with family, the respondents have pointed out that the address of the brother is also indicated is that of the family. The fact that the brother of the petitioner is working as an Assistant Teacher with the respondent-Board is not in dispute. Even otherwise, the family has received certain amounts by way of provident fund and gratuity and is also receiving family pension. If the respondents have taken into account all these factors including the size of the family, the financial benefits received and being received by the family and the fact that one member of the family is already employed and found that the family is not in need of immediate assistance so as to justify the order of compassionate appointment, it would not be possible for this Court to overrule such a conclusion and direct compassionate appointment in favour of the petitioner.

7. At this stage, the counsel for the petitioner contends that under similar situation one Shri Habib Noor Pathan has been given compassionate appointment on 31.7.03. For want of particulars, it is not possible to compare the two cases. However, if the petitioner makes a representation to the respondents pointing out that under identical circumstances, compassionate appointment has been granted in favour of some other person, the respondents shall consider the representation of the petitioner and dispose of the same in accordance with law.

8. In the result, I do not find that the petitioner has made out any case for grant of compassionate appointment. The petition, therefore, subject to the above observations, is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)